CHEAH FOONG CHIEW

v.

LEMBAGA JURUTERA MALAYSIA

MAHKAMAH TINGGI, KUALA LUMPUR
DATO' HJ. ABU MANSOR BIN ALI J.
[ORIGINATING SUMMONS NO. R2-24-05 OF 1993]
16 SEPTEMBER 1993

INJUNCTION: Application to set aside injunction prohibiting enquiry by professional body into conduct of member - Conduct complained of occurred prior to amendment of relevant Act - Whether the professional body is able to maintain proceedings against the member in view of the amendment.

The plaintiff, an engineer, had obtained an *exparte* injunction prohibiting the Lembaga Jurutera Malaysia ("the Lembaga") from enquiring into allegations of professional misconduct allegedly committed by the plaintiff. The Government had also instituted a civil suit against the plaintiff. This was however withdrawn just prior to this application which was brought by the Lembaga to set aside the injunction issued against them.

The argument submitted on behalf of plaintiff was centred on the amendment to the Registration of Engineers Act (the Act), effective from 16 January 1987. Section 15(1)(g) of the Act was amended to include the words "**or any regulation made thereunder**". The plaintiff had been charged under s. 15(1)(g) of the Act which prior to amendment stipulated for the cancellation of the registration of any engineer who has been found to have contravened the Act.

The plaintiff was charged under regulation 25 of the 1972 Regulations made under s. 26 of the Act. Counsel for the plaintiff submitted that since the charge related to conduct committed prior to amendment of the legislation, the plaintiff could be not charged under any **regulation.**

Counsel for the Lembaga responded that the regulation must be deemed to have been made under the Act and formed part of the Act though made before the amendment. He further contended that by s. 4 (f) of the Act, the Lembaga has the power to determine and regulate the conduct and ethics of the engineering profession.

Held:

[1] Any alleged contravention of the 1972 Regulations under which plaintiff was charged must by virtue of the Interpretation Act be also for contravention of the said Act, including the then existing subsidiary legislation which is deemed to have been made under the Act.

[2] The addition of the word 'regulation' in s. 15(1)(g) in 1987 is mere surplusage, making clear what was already there. Only if the regulation had not existed at the time the conduct complained of was committed will the case be looked at differently.

[3] It is also in the public interest and that of the plaintiff that the complaint be investigated and disposed of.

[Application granted. Injunction set aside].

Case referred to:
Majlis Peguam Malaysia & 3 Ors. v. Joseph Au Kong Weng [1993] 2 CLJ 417 ***(refd)***

Legislation referred to:
Interpretation Acts 1948 and 1967, s. 24
Registration of Engineers Act 1967, s s. 4(f), 15(1)(g), 26
Registration of Engineers Rules 1972, regulation 25

For the plaintiff - D.J. Puthucheary (P.Pereira with him); M/s. Skrine & Co.
For the defendant - M Pathmanathan; M/s. Yusuf Lee Pathma & Marbeck

JUDGMENT

Hj. Abu Mansor bin Ali J:
On 14 September 1993 on the application of the defendant/respondent in enclosure (10), I set aside the *exparte* injunction obtained by the plaintiff, a qualified practicing engineer, on the 13 February 1993 against the defendant, the Lembaga Jurutera Malaysia, restraining the defendant (Lembaga) from enquiring into the plaintiff's alleged misconduct of failure to supervise government contract works of building an arms depot in Malacca which was alleged to have occurred prior to the amendment of the Registration of Engineers Act 1967, which amendment was with effect from 16 January 1987.

The terms of the injunction was restraining the Lembaga from so enquiring into the plaintiff's conduct, until after the disposal of a civil suit brought by the Government of Malaysia against the plaintiff and another (Guaman S2-21-130-91 di Mahkamah Tinggi Kuala Lumpur) and

until the conclusion of the plaintiff's present action in this proceeding for the declarations prayed for.

At the outset of argument Counsel for the plaintiff, Y.B. Datuk D.J. Puthucheary, informed the Court that the said civil suit against the plaintiff has just been withdrawn and because of that withdrawal the plaintiff applied before me, to maintain and have the same injunction amended in respect of and for the purpose of the rest of plaintiff's main prayers in the declaration in enclosure (3) for which the injunction was first obtained in aid of.

After hearing the parties I decided in the respondent's favour and I discharged the injunction so obtained by the plaintiff as I find there is no serious question to be argued which would require me to maintain the injunction obtained.

As I have referred to earlier it is common ground that the alleged conduct of the plaintiff to be enquired into by the respondent Lembaga occurred before the 16 January 1987, the date on which the Registration of Engineers Act was amended. It is also common ground that the charge which the plaintiff faces at the proceedings of the Lembaga is under s. 15(1) of the said Act prior to its amendment which reads:

> Section 15(1) Subject to this section the Board may order the cancellation of the registration of any Engineer under any of the following circumstances:
>
> (a) -(f) - not applicable;
>
> (g) if he is found by the Board to have contravened this Act.

This s. 15(1)(g) is to be found under Part IV of the said Act and with effect on 16 January 1987 the above s. 15(1)(g) was amended to read as follows:

> (g) if he is found by the Board to have contravened, or failed to comply with, this Act or any **regulations made thereunder.**

It is the contention of the plaintiff's Counsel that since the alleged act for which the plaintiff is charged before the Lembaga, was in respect of pre-amendment legislation, he can only be charged for any offence against the Act but not any regulations thereunder as the word regulations only came to be included by the 16 January 1987 amendment.

The plaintiff's Counsel further argued that whatever powers the Board has in this proceedings are what has been spelt out in s.4 of the Act:

> Section 4 The functions of the Board shall be -
>
> (a) - not applicable;
> (b) - not applicable;
> (c) to order cancellation, removal or reinstatement in accordance with Part IV.

And s. 15(1)(g), as we have seen speaks of only if the Act is contravened. The charge to be faced by the plaintiff is against regulation 25 of the 1972 Regulations which read:

> A Registered Engineer shall order his conduct so as to uphold the dignity, standing and reputation of the profession.

The 1972 Regulations is made under s. 26 of the said Act and s. 26 is under Part V of the Act. It is the argument of plaintiff's Counsel that since the Regulations is made under s. 26 it must be confined to its use or purposes and the Regulations so made can in no way extend the Board's powers under s. 4 thereof.

The issue before the Court was to determine whether it is a correct reading of the Act that the Lembaga has no powers to bring this proceedings under the Act against the plaintiff as alleged? The respondent argued it has and I uphold that submission.

Mr. Pathmanathan for the respondent argued that the Powers of the Board under s. 4 of the Act goes much wider:

> Section 4(1) The functions of the Board shall be -
>
> (a) ...) not applicable;
> (b) ...) not applicable;
> (c) to order cancellation, removal or reinstatement in accordance with Part IV;
> (d) ...) not applicable;
> (e) to hear and determine disputes relating to professional conduct or ethics of Engineers or to appoint a committee or arbitrator or arbitrators to hear and determine such disputes;
> (f) to determine and regulate the conduct and ethics of the engineering profession; and
> (g) generally, to do all such acts, matters and things as are necessary to carry out the provisions of this Act.

Mr. Pathmanathan's argument was that although the Regulations is made under s. 26

thereof, falling under Part V of the Act, it is deemed to have been made under the Act and formed part of the Act. His further argument is that the plaintiff could be charged and be found guilty under s. 15(1)(g) (provision under Part (IV)) if he is so found by the Lembaga to have contravened or failed to comply with this Act by virtue of which the Lembaga by s. 4(f) of the Act has the power to determine and regulate the conduct and ethics of the engineering profession. In exercise of the powers under s. 26 of the Registration of Engineers Act 1967, the Lembaga of Engineers with the approval of the Minister made the Registration of Engineers Rules 1972 (P.U.(A) 290 of 1972) and regulation 25 thereof reads:

> A Registered Engineer shall order his conduct so as to uphold the dignity, standing and reputation of the profession.

This regulation, the learned respondent's Counsel says is part of the Act, though made before the 16 January 1987 amendment. I also uphold learned Counsel's submission that the Interpretation Acts 1948 and 1967 do apply in interpreting the said Engineers Act. Section 24 of the said Interpretation Acts reads:

> Section 24 Anything done under any subsidiary legislation shall be deemed to be done under the Act or other written law under which the subsidiary legislation was made.

I uphold the learned respondent's Counsel's contention that any alleged contravention of the 1972 Regulations under which the plaintiff was charged, must by virtue of the Interpretation Act be also for contravention of the said Act, including the then existing subsidiary legislation which is deemed to have been made under the Act. The concerned subsidiary legislation is one in existence prior to 16 January 1987. I hold that the adding of the word regulation in s. 15(1)(g) in 1987 is mere surplusage, making clear what was already there. It would have made a difference if the Regulations were never made, at all, at the relevant time when the alleged act was committed. If the plaintiff did indeed contravene the Regulations, it is very clear that the Regulations were made under the Act.

If he is found by the Board to have contravened this Act under s. 15(1)(g) it must mean and was intended, by the legislature, to mean any Regulations made under this Act. I give effect to that interpretation being what I think was intended by the Act.

Learned Counsel for the respondent also submitted that it is in the public interest that the injunction be lifted in order that the complaint against the plaintiff can be disposed at the earliest convenience both for the plaintiff's benefit, if he is innocent and it is also trite law that the charge should not be hanging over the plaintiff's head indefinitely. This is in accordance with the latest statement of the Supreme Court to see that such complaints be dealt with expeditiously in *Majlis Peguam Malaysia & 3 Ors. v. Joseph Au Kong Weng* [1993] 2 being a charge against a member of another profession - the lawyers. Since it is my view that the Board may prefer this charge against the plaintiff and it is in the public interest and that of the plaintiff that the charge be expeditiously disposed of, I exercised my discretion in favour of the respondent's application that the injunction be lifted so that the enquiry can be quickly begun and I grant the order in terms of respondent's application in enclosure (10).